

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 04-0350****Sales and Use Tax
For Tax Years 2003**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE**I. Sales and Use—Aircraft Purchase**

Authority: 45 IAC 2.2-4-27; 45 IAC 2.2-5-15; Black's Law Dictionary 898 (7th ed. 1999)

Taxpayer protests the imposition of sales tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

DISCUSSION**I. Sales and Use—Aircraft Purchase**

Taxpayer protests the imposition of sales tax on its purchase of an aircraft in 2003. Taxpayer paid one million, five hundred ninety-five thousand dollars (\$1,595,000.00) for the aircraft. The Department compared a non-related aircraft rental company's rate of one thousand dollars per hour (\$1,000.00/hour) for the same type of aircraft, to the rate of thirty-five hundred dollars per month (\$3,500.00/month) taxpayer charged for its aircraft. The rental rate was far below the market rate and took no measure of actual usage. The aircraft could only be used 3.5 hours per month to meet the market rate. Taxpayer provided records indicating far more than 3.5 hours use

for most months. Also, the same individual signed the lease as both lessor and lessee. The Department determined that taxpayer was not renting the aircraft and denied the exemption.

The exemption at issue is found in 45 IAC 2.2-5-15, which states:

- (a) The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose of reselling, renting or leasing, in the regular course of the purchaser's business, such tangible personal property in the form in which it is sold to such purchaser.
- (b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:
 - (1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;
 - (2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and
 - (3) The property is resold, rented or leased in the same form in which it was purchased
- (c) Application of general rule.
 - (1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.
 - (2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.
 - (3) The property must be resold, rented or leased in the same form in which it was purchased.

45 IAC 2.2-5-15(b) requires that three conditions be met in order to qualify for the exemption. One condition is 45 IAC 2.2-5-15(b)(2), which states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. The Department notes that a single individual signed as both lessee and lessor on the leasing agreement. A lease is defined as "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." Black's Law Dictionary 898 (7th ed. 1999). The parties' agreement reflected the fact that lessee never expected to pay consideration sufficient to justify recognizing the agreement as a lease. This shows that taxpayer was not occupationally engaged in reselling, renting or leasing the aircraft in the regular course of its business.

Under these circumstances, taxpayer does not satisfy 45 IAC 2.2-5-15-(b)(2) and does not qualify for the leasing exemption.

Taxpayer protests that the Department did not look carefully enough at the method taxpayer used to compute the rental rate. Taxpayer explains that it used a formula that took into account the cost of capital, the tax depreciation benefit and the obsolescence factor. Taxpayer assumes that the Department compared rates that included costs for maintenance, hangar, insurance and possibly fuel costs, which taxpayer explains were paid by its lessee.

The Department refers to 45 IAC 2.2-4-27(d), which states in relevant part:

The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

- (1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

...

This regulation means that taxpayer was required to collect sales tax on all consideration it received from its customer for lease of the aircraft. Taxpayer was not collecting sales tax on the consideration it received from its customer when the customer paid for insurance, hangar, fuel, and maintenance. This is further evidence that taxpayer's relationship with its customer was not a valid lessor/lessee relationship.

Taxpayer states that even if the rental rate was too low, the proper remedy would be to adjust the rental rate, not to disallow the rental exemption. Taxpayer has provided no citation to any statute or regulation to support its position that the proper remedy would be to adjust the rental rate. 45 IAC 2.2-5-15 simply states what the exemption is. The only options are to either approve or deny the exemption. There is no provision to retroactively adjust the rental rate in order to bring taxpayer into compliance.

In conclusion, taxpayer was not leasing the aircraft at a fair market rate. The rental rate and period did not reflect actual usage. There is no provision in 45 IAC 2.2-5-15 to retroactively adjust the rental rate. Taxpayer applied for an exemption and did not qualify. The Department properly denied the claim.

FINDING

Taxpayer's protest is denied.